

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUIN CARCANO; PAYTON GREY )  
MCGARRY; H.S., by her next friend and )  
mother, KATHRYN SCHAFER; ANGELA )  
GILMORE; KELLY TRENT; BEVERLY )  
NEWELL; and AMERICAN CIVIL )  
LIBERTIES UNION OF NORTH CAROLINA,) )

Plaintiffs, )

vs. )

CASE NO. 1:16-CV-00236-TDS-JEP )

PATRICK MCCRORY, in his official capacity )  
as Governor of North Carolina; UNIVERSITY )  
OF NORTH CAROLINA; BOARD OF )  
GOVERNORS OF THE UNIVERSITY OF )  
NORTH CAROLINA; and W. LOUIS )  
BISSETTE, JR., in his official capacity as )  
Chairman of the Board of Governors of the )  
University of North Carolina, )

Defendants. )

**DEFENDANT PATRICK L. MCCRORY'S MOTION**  
**FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY**  
**IN ORDER TO MORE FULLY RESPOND TO PLAINTIFFS'**  
**MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rules of Civil Procedure 6(b), 16, and 26 as well as Local Civil Rules 6.1(a), 16.1, and 26.1, defendant Patrick L. McCrory ("Governor McCrory") hereby requests leave to conduct expedited discovery in order to more fully respond to plaintiffs' motion for preliminary injunction filed May 16, 2016 ([D.E. #21](#)). In support of this motion, Governor McCrory would respectfully show the Court as follows:

1. Plaintiffs filed this action on March 28, 2016. Plaintiffs thereafter filed an amended complaint on April 21, 2016, prior to serving process on any of the defendants.

2. Seven weeks after initiating this action, plaintiffs filed a motion for preliminary injunction on May 16, 2016, along with a 45-page supporting memorandum of law. Under this Court's Local Rules, Governor McCrory's response to plaintiffs' motion for preliminary injunction is currently due by June 9, 2016.

3. Plaintiffs seek to enjoin enforcement of North Carolina's Public Facilities Privacy and Security Act, N.C. Session Law 2016-3 ("the Act"), a law duly enacted by the North Carolina General Assembly to protect privacy and safety.

4. As described more fully in Governor McCrory's contemporaneously filed memorandum of law, expedited discovery is necessary because of the complex legal and factual issues raised by plaintiffs' motion for preliminary injunction.

5. Federal courts permit discovery related to a motion for preliminary injunction where, under the totality of the circumstances, the request for expedited discovery is reasonable or supported by a showing of good cause. See Dimension Data N. Am., Inc. v. Netstar-1, Inc., 226 F.R.D. 528, 531 (E.D.N.C. 2005) ("[A] standard based upon reasonableness or good cause, taking into account the totality of the circumstances, is more in keeping with [the] discretion bestowed upon the court in the Federal Rules of Civil Procedure."); see also Sabal Trail Transmission, LLC v. 9.669 Acres of Land, More Or Less, in Polk Cty. Fla., No. 8:16-CV-640-T-33AEP, 2016 WL 1729484, at \*1 (M.D. Fla. Apr. 20, 2016) ("Federal courts will often allow parties to conduct expedited discovery if the moving party shows 'good cause.'").

6. In this case, the parties dispute not only the law, but also numerous issues of fact. The disputed factual issues raised by plaintiffs' motion include whether the Act

protects privacy and enhances safety. The issues also involve questions related to the nature of gender identity, including whether a person's gender identity is fixed and unchanging, whether gender identity is the "only medically-approved determinant of sex," and whether "[m]edical science is clear that it is inappropriate to use chromosomes, hormones, internal reproductive organs, external genitalia, or secondary sex characteristics to override gender identity for purposes of classifying someone as male or female," as alleged by plaintiffs in support of their motion for preliminary injunction. Because of these disputed issues of fact, discovery is necessary for defendants to properly and completely respond to plaintiffs' motion for preliminary injunction.

7. Governor McCrory anticipates that appropriate discovery could be completed within four to six months and would therefore respectfully propose the following schedule for such discovery narrowly targeted to the issues raised in plaintiffs' motion for preliminary injunction:

- Forty-five (45) days for disclosure of expert witnesses, along with expert reports, and the identity and contact information of any fact witnesses;
- Sixty (60) days thereafter for deposing all witnesses (both expert and fact);
- Fifteen (15) days following the conclusion of expedited discovery for plaintiffs to file and serve any supplemental briefing in support of their motion for preliminary injunction;
- Thirty (30) days following the conclusion of expedited discovery for defendants to file and serve any supplemental briefing in opposition to plaintiffs' motion for preliminary injunction; and

- Five (5) days for the hearing on plaintiffs' motion for preliminary injunction.

The areas on which discovery is necessary are as follows:

- a) How the State of North Carolina's interests in protecting privacy and safety are advanced by the Act;
- b) The effects, including the effects on privacy and safety, of the policies advanced by plaintiffs that would permit persons of one sex to utilize multiple-occupancy restrooms, locker rooms, showers, and changing facilities designated for the other sex;
- c) The State of North Carolina's interest in distinguishing between transgender individuals who have changed their birth certificates and those who have not;
- d) The character and nature of gender identity and gender dysphoria, as well as the necessary treatment therefor, according to current medical and psychological science;
- e) The nature and extent of the alleged harm to plaintiffs and those similarly situated; and
- f) The nature and extent of the harm that would be suffered by plaintiffs if the Act is not enjoined versus the nature and extent of the harm that would be suffered by the public at large if the Act is enjoined.

8. Accordingly, under the totality of the circumstances, Governor McCrory has demonstrated that the request for targeted and expedited discovery is reasonable and supported by good cause.

9. Undersigned counsel has consulted with counsel for plaintiffs, who stated that they opposed the relief requested herein. Counsel for the intervenors consents to a period of expedited discovery related to plaintiffs' motion for preliminary injunction.

WHEREFORE, for the reasons stated above and in his contemporaneously filed memorandum of law, Governor McCrory respectfully requests that the Court permit a period of expedited discovery, that he be permitted to file a more complete response in opposition to plaintiffs' motion for preliminary injunction at the conclusion of such discovery prior to the Court ruling on the motion, that there be a hearing for the presentation of testimony and oral argument pursuant to Local Civil Rule 65.1(b), and that he be granted such other and further relief as the Court may deem just and proper.

Respectfully submitted, this the 9th day of June, 2016.

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\*appearing pursuant to Local Rule 83.1(d)

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participating attorneys.

This the 9th day of June, 2016.

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